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2
3 UNITED STATES DISTRICT COURT

4 DISTRICT OF NEVADA

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6 DAVID L. SHELTON,

Case No. 3:19-cv-00420-MMD-CSD

7 v.

Plaintiff,

ORDER

8 MICHAEL MINEV, *et al.*,

9 Defendants.

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11 **I. SUMMARY**

12 *Pro se* Plaintiff David L. Shelton, who is an inmate in the custody of the Nevada
13 Department of Corrections (“NDOC”), brings this action under 42 U.S.C. § 1983 regarding
14 alleged deliberate indifference to his serious medical (dental) needs and retaliation while
15 incarcerated at the Lovelock Correctional Center (“LCC”). (ECF No. 4.) Before the Court
16 is a Report and Recommendation (“R&R”) of United States Magistrate Judge William G.
17 Cobb (ECF No. 65),¹ recommending the Court grant Defendants Russelle Donnelly, Brian
18 Egerton, Michael Minev, Catherine Yup, and Desiree Hultenschmidt’s motion for summary
19 judgment (ECF No. 57 (“Motion”)). Shelton filed an objection to the R&R (ECF No. 67
20 (“Objection”)) and Defendants filed a response to the Objection (ECF No. 68).² Because
21 the Court agrees with Judge Cobb’s analysis in the R&R, finds the Objection
22 unpersuasive, and as further explained below, the Court will adopt the R&R and grant the
23 Motion.

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26 ¹Judge Cobb retired after he issued this R&R. (ECF No. 66.) United States
Magistrate Judge Craig S. Denney now presides over this case. (*Id.*)

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28 ²Shelton also filed a reply in support of his objection. (ECF No. 69.) However,
“[r]eplies will be allowed only with leave of court.” LR IB 3-2(a). Shelton did not seek or
obtain the Court’s leave before filing his reply. The Court therefore declines to consider
Shelton’s reply and will direct the Clerk of Court to strike it.

1 **II. BACKGROUND**

2 The Court incorporates by reference Judge Cobb's recitation of Shelton's
 3 allegations in his Complaint provided in the R&R along with the procedural history of this
 4 case, which the Court adopts. (ECF No. 65 at 1-3.) The Court also adopts from the R&R
 5 and incorporates by reference the legal standard applicable to Defendants' Motion (*id.* at
 6 4-6), and Judge Cobb's description of the applicable evidence (*id.* at 7-11).

7 Judge Cobb generally recommends that the Court grant Defendants' Motion as to
 8 Shelton's Eighth Amendment deliberate indifference to serious medical needs claim
 9 because the evidence shows Defendants were not deliberately indifferent to his serious
 10 medical needs regarding his decaying teeth and related dental issues, and Hultenschmidt
 11 lacked authority to make decisions about Shelton's dental treatment. (*Id.* at 12-14.) Judge
 12 Cobb further recommends the Court grant Defendants' Motion as to Shelton's retaliation
 13 claim against Dr. Yup because there is no evidence that Dr. Yup rescheduled an
 14 appointment to a later date because Shelton filed grievances, though Judge Cobb also
 15 rejected Defendants' argument this claim was barred for failure to exhaust administrative
 16 remedies. (*Id.* at 14-18.)

17 **III. LEGAL STANDARD**

18 This Court "may accept, reject, or modify, in whole or in part, the findings or
 19 recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party
 20 timely objects to a magistrate judge's report and recommendation, then the Court is
 21 required to "make a de novo determination of those portions of the [report and
 22 recommendation] to which objection is made." *Id.* The Court's review is thus de novo as
 23 to the arguments Shelton raises in his Objection because Shelton filed his Objection. (ECF
 24 No. 67.)

25 **IV. DISCUSSION**

26 Shelton raises several arguments in his Objection. While the Court finds none of
 27 them persuasive, the Court briefly addresses them below.

28 To start, Shelton generally argues that Judge Cobb misapplied the legal standard

1 governing motions for summary judgment. (ECF No. 67 at 4.) The Court disagrees. Judge
2 Cobb carefully examined the evidence and found it does not support Shelton's allegations.
3 The Court agrees with Judge Cobb's analysis provided in the R&R and will accept and
4 adopt the R&R in full.

5 Shelton next seems to argue Judge Cobb overlooked certain evidence he
6 submitted showing that he filed a grievance saying that it took him seven weeks to get a
7 dental appointment and it is well-known at LCC that you must file a grievance to get a
8 dental appointment. (*Id.* at 4-5.) However, Judge Cobb specifically described this
9 grievance in the R&R (ECF No. 65 at 7-8) and ultimately explained Shelton did not provide
10 any evidence to support the allegation contained therein (*id.* at 12-13). Thus, Judge Cobb
11 explicitly considered but was not persuaded this piece of evidence Shelton proffered.

12 Shelton then argues that Judge Cobb erred in recommending the Court grant
13 Defendants' Motion as to his retaliation claim against Dr. Yup because a jury could infer
14 from the fact that Dr. Yup allegedly warned Shelton against filing unwarranted grievances
15 and having his wife write more letters complaining about the dental treatment Shelton
16 received that Dr. Yup rescheduled one of his appointments in retaliation for Shelton's filing
17 of grievances. (ECF No. 67 at 5-6, 7, 9.) However, as Judge Cobb explained, Shelton
18 does not dispute that Dr. Yup's stated reason for rescheduling the pertinent appointment
19 was because her equipment was not operational. (ECF No. 65 at 17-18.) Shelton
20 accordingly argues that her stated reason was a pretext but does not proffer any evidence
21 to support his theory that the reason Dr. Yup gave Shelton was pretextual. (See *id.*) The
22 Court agrees with Judge Cobb that Shelton proffered no evidence to support his theory
23 that Dr. Yup's stated reason was pretextual and accordingly overrules Shelton's Objection
24 to the extent based on this argument as well.

25 Shelton finally takes issue with Judge Cobb's conclusion Dr. Yup provided Shelton
26 with constitutionally adequate dental care because she saw him at least once every two
27 months or so, and sometimes much more frequently, relying on two cases from the Eighth
28 Circuit Court of Appeals finding that delays in dental care of about three weeks and about

1 two months at least precluded summary judgment on the Eighth Amendment dental claims
2 in those cases. (ECF No. 67 at 6 (first citing *Fields v. Gander*, 734 F.2d 1313 (8th Cir.
3 1984), then citing *Hartsfield v. Colburn*, 371 F.3d 454 (8th Cir. 2004).) While these cases
4 do not bind this Court, they also do not persuade the Court that Judge Cobb erred in the
5 R&R because they are distinguishable from the facts of this case in any event. In both
6 cases, there was evidence that the defendants intentionally prevented the plaintiffs from
7 seeing dentists for nonmedical reasons—in *Fields*, because the plaintiff had not paid a
8 prior dental bill, see 734 F.2d at 1314-15, and in *Hartsfield*, because of the plaintiff's
9 behavior, see 371 F.3d at 456. These cases are accordingly distinguishable from this case
10 where Dr. Yup, a dentist, saw Shelton many times, and no other prison officials prevented
11 Shelton from seeing Dr. Yup for nonmedical reasons.

12 In sum, the Court overrules Shelton's Objection because it finds the arguments
13 therein unconvincing. The Court accepts and adopts the R&R in full.

14 **V. CONCLUSION**

15 The Court notes that the parties made several arguments and cited to several cases
16 not discussed above. The Court has reviewed these arguments and cases and determines
17 that they do not warrant discussion as they do not affect the outcome of the issues before
18 the Court.

19 It is therefore ordered that Shelton's Objection (ECF No. 67) to the Report and
20 Recommendation of United States Magistrate Judge William G. Cobb is overruled. The
21 Report and Recommendation (ECF No. 65) is accepted and adopted in full.

22 It is further ordered that Defendants' motion for summary judgment (ECF No. 57)
23 is granted.

24 The Clerk of Court is directed to strike Shelton's reply (ECF No. 69) filed in support
25 of his Objection for noncompliance with LR IB 3-2(a).

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1 The Clerk of Court is further directed to enter judgment accordingly—in Defendants'
2 favor—and close this case.

3 DATED THIS 21st Day of March 2022.

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7 MIRANDA M. DU
8 CHIEF UNITED STATES DISTRICT JUDGE
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